

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ8473

Plaintiff, )

v. )

Jose GOMEZ-Garduno, )

Defendant. )

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FINDINGS OF FACT AND ORDER  
OF DETENTION

On the Court's own motion and in accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on May 27, 2008, to determine whether defendant Jose GOMEZ-Garduno, should be held in custody pending trial on the grounds that he is a flight risk. Assistant U. S. Attorney John F. Weis, appeared on behalf of the United States. Diane Regan, of Federal Defenders of San Diego, Inc., appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the pretrial services officer, and the criminal complaint issued against the Defendant on May 27, 2008, by this Court, the Court concludes that the following facts establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the Defendant is required.

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FINDINGS OF FACT3  
A. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1))

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1. The Defendant is charged in Criminal Complaint No. 08MJ8473 with Deported  
5 Alien Found in the United States, in violation of Title 8, United States Code, § 1326. Therefore  
6 probable cause exists to believe the Defendant committed the charged offense.

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B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2)):

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1. On May 25, 2008, U. S. Border Patrol Remote Video Surveillance System  
9 Operator observed three individual make an illegal entry into the U.S. by climbing over the International  
10 Boundary fence with Mexico. Border Patrol Agent Delarosa approached that the group was in the U.S.  
11 illegally.

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2. Record checks revealed that the Defendant had previously been deported.  
13 Defendant admitted to his prior deportation and criminal record.

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C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3))

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1. The Defendant is a Citizen of Mexico.  
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2. The Defendant resides in Mexicali, Baja California, Mexico.  
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3. The Defendant has no immigration status to live in the United States.  
18 Furthermore, the Defendant was deported from the United States on July 28, 2006, through San Ysidro  
19 Port of Entry.

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D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4))

21  
1. The Defendant has the following criminal history:

22  
12/24/07 -Violation of Parole - To Finish Term

23  
12/20/07 - 11377 HS Possess control substance - arrest only

24  
08/17/06 - 273 Inflict Corporal punish - arrest only

25  
- Fail to appear after written promise

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07/25/06 - 8 USC 1325 - removed

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02/15/06 - 12021 Felon possess firearm - 16 months prison

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12316 Prohibit own amm - Furtherance of justice

496 Receive stolen property - Furtherance of justice

Grand Theft firearm/animal - Furtherance of justice

1                   02/09/05 - Probation reinstated - 120 days jail  
2                   01/18/05 - Probation reinstated - 25 days jail, 36 months probation  
3                   01/18/05 - 459 Burglary - 120 days jail, 36 months probation  
4                   475 Possess bad check - furtherance of justice  
5                   496 Receive known stolen property - furtherance of justice  
6                   01/02/05 - 11377 Possess control substance - arrest only  
7                   273 Corporal punishment - arrest only  
8                   496 Receive stolen property - arrest only  
9                   459 Burglary - arrest only  
10                  04/12/04 - Probation reinstated - 30 days jail, fine  
11                  11/26/03 - Probation reinstated - 30 days jail  
12                  09/08/03 - 11377 Probation controlled substance - 1 year diversion  
13                  08/29/03 - Unspecified charge (convicted)  
14                  12/27/02 - Inflict corporal punishment - 30 days jail, 36 months probation

## II

REASONS FOR DETENTION

16                  A.        There is probable cause to believe that the Defendant committed the offense charged in  
17                  Criminal Complaint No. 08MJ8473, namely, Deported alien Found in the United States (Felony), in  
18                  violation of Title 8, United States Code, § 1326.

19                  B.        The Defendant faces a substantial period of time in custody if convicted of the offense  
20                  charged in the Complaint. He, therefore, has a strong motive to flee.

21                  C.        Furthermore, the Defendant is a citizen of Mexico and has no legal right to live or work  
22                  in the United States. Bail is, therefore, impractical as defendant if released on bail would be taken into  
23                  immigration custody and remain in custody or would be deported and unavailable for further  
24                  proceedings before this Court.

25                  D.        Based upon the Court's findings there is no condition or combination or conditions that  
26                  will reasonably assure the appearance of the Defendant as required.

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3 ORDER

4 IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

5 IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney  
6 General or his designated representative for confinement in a corrections facility separate, to the extent  
7 practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The  
8 Defendant shall be afforded reasonable opportunity for private consultation with counsel.

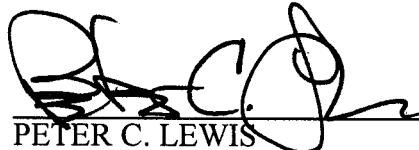
9 While in custody, upon order of a court of the United States or upon the request of an attorney  
10 for the United States, the person in charge of the correctional facility shall deliver the Defendant to the  
11 United States Marshal for the purpose of an appearance in connection with a court proceeding or any  
other appearance stipulated to by defense and government counsel.

12 THIS ORDER IS ENTERED WITHOUT PREJUDICE.

13 IT IS SO ORDERED.

14 DATED: 6-16-08.

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PETER C. LEWIS  
UNITED STATES MAGISTRATE JUDGE

Prepared by:

KAREN P. HEWITT  
United States Attorney

John F. Weis  
JOHN F. WEIS  
Assistant U. S. Attorney

cc: Diane Regan  
Federal Defenders of San Diego, Inc.